UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS P. ATHRIDGE, et al., **Plaintiffs,** **v.** **JORGE IGLESIAS, et al.,** **Defendants.**	**Civil Action No. 89-1222 (JMF)**

THOMAS P. ATHRIDGE, et al., **Plaintiffs,** **v.** **HILDA RIVAS,** **Defendant.**	**Civil Action No. 92-1868 (JMF)**

MEMORANDUM OPINION

This case was referred to me by Judge Urbina for all purposes including trial pursuant to LCvR 73.1(a). I herein resolve Defendants' Motion in Limine and Plaintiffs' Rule 21 Motion to Compel Defendants to Join Additional Party. For the reasons set forth below, both motions will be denied.

DEFENDANTS' MOTION IN LIMINE

Background

As I have stated in previous opinions, the history of this case is long and convoluted.

Sixteen years ago, defendants Francisco Rivas ("Mr. Rivas") and Hilda Rivas ("Mrs. Rivas") took an extended vacation to Guatemala. Before they left, the Rivases arranged for Jorge Iglesias ("Jorge"), their 17-year-old nephew, to mow their lawn while they were away. On July 29, 1987, while at the Rivas' home to do this chore, Jorge found the keys to their Volkswagen Jetta in a jar on a window sill. Although he did not have a driver's license, Jorge decided to go for a drive. Unfortunately, Jorge accidentally struck and seriously injured 15-year-old Thomas Athridge, Jr. ("Tommy"), causing permanent brain damage. The Jetta was titled in the name of Churreria Madrid Restaurant, a partnership owned by Mr. and Mrs. Rivas.

The accident generated four lawsuits, two of which are relevant here. In Civ. No. 89-1222 Tommy sued Jorge, Mr. Rivas, and Churreria Madrid Restaurant. In Civ. No. 92-1868, Tommy sued Mrs. Rivas.

By his order of November 13, 1992, Judge Thomas Penfield Jackson consolidated all four cases. On July 19, 1995, Judge Jackson granted summary judgment in favor of all defendants except Jorge. The remaining claim, Tommy's negligence action against Jorge in Civ. No. 89-1222, was then transferred to Judge Harold Greene on March 3, 1996.

Thereafter, Judge Greene conducted a trial in which the Athridges presented their case against Jorge on the issues of driver negligence and damages. On the first day of trial, Jorge's attorney made a motion for bifurcation so that the defendants would not be prejudiced by trying the issues of liability and damages together. In response, plaintiffs' attorney proposed that the "case be tried to the Court without a jury which would not require any ruling on whether or not the jury would be prejudiced by damages." Memorandum of Points and Authorities in Support of Plaintiff's Opposition to Defendants' Motion in Limine ("Mem. Pl. Opp.") at 5. Defense

counsel did not oppose the request, and the case was tried without a jury. While this case was being tried, Tommy's cases against the other defendants were on appeal in the Circuit Court for the District of Columbia.

The Pending Motion in Limine and the Parties' Arguments

Defendants have filed a Motion in Limine in which they move the Court to designate the trial scheduled for January 20, 2004 as a non-jury trial. Defendants' Motion in Limine ("Defs. Mot.") at 1. Defendants contend that, because plaintiffs waived their right to a trial by jury when their case against Jorge was tried, plaintiffs should not be allowed to reassert their demand for a jury trial now. According to defendants, common fairness dictates that "[p]laintiffs cannot elect [t]rial of one aspect of the case as non-jury, having expressly waived plaintiffs' jury demand, and thereafter assert a remaining aspect of the case to be tried before a jury." Id. at 3.

Plaintiffs, however, claim that the trial scheduled for January 20, 2004 should be a jury trial. Specifically, plaintiffs argue that their waiver of a jury trial did *not* extend to their claims against the Rivases.[1] Mem. Pl. Opp. at 1. Rather, the waiver extended only to claims against Jorge. In support of this assertion, plaintiffs point to the fact that their claims against the Rivases and their claims against Jorge were severed when Judge Jackson entered final judgment in favor

[1] Plaintiffs also assert that a non-jury trial is inconsistent with the parties' prior positions and the D.C. Circuit's opinion in this case because the appellate court contemplated that the issues would be relitigated before a jury in further proceedings consistent with its opinion. See Athridge v. Rivas, 312 F.3d 474, 478 (D.C. Cir. 2002). While plaintiffs argue that such proceedings must be held before a jury, I do not agree. Nothing in the circuit court's opinion addressed the effect of plaintiffs' waiver of a jury trial before Judge Greene. As defendants noted in their opposition, the D.C. Circuit's language stating that the case should have been submitted to a jury indicated that there were genuine issues of material fact to be determined by a factfinder, whether that trier of fact be a judge or a jury.

of the Rivases. In addition, when plaintiffs waived their right to a jury trial in their case against Jorge, the case against the Rivases was on appeal. Finally, defendants argue that even if plaintiff's claims against the Rivases and Jorge were considered one case, they still had the right to waive their right to a trial by jury on some issues and not on others.

Analysis

Under Federal Rule of Civil Procedure 38(c), a party may demand trial by jury on specific issues and not on others. Fed. R. Civ. P. 38(c). In addition, under Federal Rule of Civil Procedure 38(d), "[a] demand for trial by jury . . . may not be withdrawn without consent of the parties." Fed. R. Civ. P. 38(d). Both of these rules must be read in light of the principle that, because the "right of jury trial is fundamental, courts indulge every reasonable presumption against waiver." Aetna Ins. Co. v. Kennedy, 301 U.S. 389, 393 (1937).

Here, it is undisputed that plaintiffs initially made a demand for a trial by jury on all of the issues and against all of the defendants. The issue, therefore, is whether plaintiffs waived their right to a trial by jury against some of the defendants (*i.e.,* the Rivases) when they waived their right to a jury trial against another defendant (*i.e.,* Jorge). As defendants have conceded in their motion, whether the remaining aspects of this case should be tried without a jury is discretionary with the Court.

In my view, plaintiffs did not waive their right to a jury trial as to all aspects of their cases against all defendants when their counsel offered to try the case against Jorge without a jury. At the time plaintiffs waived their right to a jury trial, their cases against Jorge and the Rivases had been severed because Judge Jackson had granted summary judgment in favor of all defendants except Jorge. In fact, the case against the Rivases was on appeal, awaiting a decision

by the D.C. Circuit. Thus, plaintiffs' waiver only applied to the case before the court - the case against Jorge. Accordingly, the trial set for January 20, 2004 will be a jury trial.

PLAINTIFFS' MOTION TO COMPEL DEFENDANTS TO JOIN ADDITIONAL PARTY

Also pending before me is Plaintiff's Rule 21 Motion to Compel Defendants to Join Additional Party. Via this motion, plaintiffs have moved the court to order defendants to join their insurer, the Government Employees Insurance Co. ("GEICO"), as an additional party.

In support of their motion, plaintiffs argue that Federal Rule of Civil Procedure 14(a) authorizes the Rivases to file a third-party complaint against GEICO alleging that GEICO is liable for all or part of their potential liability to plaintiffs. Supplemental Memorandum in Support of Plaintiff's Rule 21 Motion to Compel Defendants to Join Additional Party ("Pl. Supp. Mem. in Supp.") at 2. Plaintiffs also point out that Rule 21 authorizes the court to order the defendants to implead GEICO because the court may add parties whose presence is deemed to be "necessary or desirable."[2] Id. at 5 (citing Wright, Miller, & Kane, *Federal Practice and Procedure,* Civil 2d. § 1683 (1990)). According to plaintiffs, impleading GEICO at this point in the litigation would be both economical and efficient because it would avoid the initiation of lawsuits against GEICO in the future. Id. at 5-6. Plaintiffs make this claim not because they

[2] Plaintiffs make the allegation that, if the Rivases were represented by independent counsel rather than counsel chosen and paid by GEICO, they would certainly be advised to implead their insurer in this action. Plaintiffs also briefed several theories of GEICO's liability over to the Rivases "not for the Court to consider the merits of these claims, but to assure the Court that adding GEICO would not be an exercise in futility." Supplemental Reply in Support of Plaintiffs' Rule 21 Motion to Compel Defendants to Join Additional Party. However, for the reasons stated above, I find no reason to exercise my discretion to compel defendants to join GEICO in this action, and I will not address these premature arguments made by plaintiffs.

have any independent rights to assert against GEICO but because they assume that, if the Rivases are found liable and if they are not able to pay the resulting judgment, they "are entitled to an assignment of the Rivases' rights against GEICO since Judge Greene ordered Jorge to assign to plaintiffs his rights against Aetna." Id. at 3.

I find several problems with plaintiffs' arguments. First, as the defendants point out in their opposition, plaintiffs cannot combine two Federal Rules that *allow* impleader and fashion a rule under which the defendants *must be* ordered by the court to implead their insurer. See Supplemental Motion in Opposition to Plaintiff's Rule 21 Motion to Compel Defendants to Join Additional Party ("D. Supp. Mem. in Opp.") at 3. At most, plaintiffs can ask me to exercise my discretion in ordering the impleader, which a court may do if it finds such an action to be necessary or desirable. Here, however, compelling the defendants to implead their insurer is neither necessary nor desirable. As stated above, GEICO is a relevant party if - *and only if* - the Rivases are found liable, a finding that cannot be known until the trial is resolved. Therefore, compelling defendants to implead GEICO is completely premature. In addition, plaintiffs' motion is based on the assumption that, if the Rivases are found liable, I will assign all of their rights under their GEICO insurance policy to plaintiffs. That premise, however, is merely an assumption. I have not and will not make any determinations about the possible assignment of the Rivases' rights until it is necessary to do so, that is, if and when the Rivases are found liable. For these reasons, I will not order the Rivases to implead their insurer.

JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

Dated:

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ORDER

In accordance with the accompanying Memorandum Opinion, it is hereby

ORDERED that Defendants' Motion in Limine [#167] and Plaintiffs' Rule 21 Motion to Compel Defendants to Join Additional Party [#125] are **DENIED**.

SO ORDERED.

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JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

Dated: